

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
MARCH 22, 2004**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 22, 2004 in the City Council Chamber of the Melvin Municipal Office Building, City of Greensboro, North Carolina, commencing at 2:10 p.m. The following members were present: Vice Chair Joyce Lewis, Marshall Tuck, John Cross, Peter Kauber and Hugh Holston. Bill Ruska, Zoning Administrator, Stefan-Leih Kuns, Preservation Planner, and Blair Carr, Esq., from the City Attorney's Office, were also present.

Vice Chair Lewis called the meeting to order, and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Vice Chair Lewis also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Changes were made in the February 23, 2004 minutes as follows:

Page 22, paragraph 7, "Mr. Cross stated that there," should be changed to read: "Mr. Cross asked if there."

Page 31, paragraph 7, line 4, "It is true, based on this that the new door be approved," should read: "It is true, based on that that the new door was recommended to be approved."

On the approval of the December 22, 2003 minutes, Mr. Tuck said he had abstained on this vote since he was not present for the December 22, 2003 meeting.

Mr. Kauber moved that the February 23, 2004 minutes be accepted as corrected, seconded by Mr. Holston. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Holston, Kauber, Tuck, Cross. Nays: None.)

Mr. Ruska was sworn in for evidence to be given by him on the requests before the Board today.

OLD BUSINESS

Counsel Carr said as a point of review prior to the first case, which is an appeal, she wanted to review with the Board the criteria that the Board has to apply in this case. This is not a common situation for the Board to be sitting as an appellate Board and she wanted to make sure that all the Board members were aware of the standards that they needed to apply. She said it might also make it easier on the Vice Chair in that she did not need to swear anybody with regard to this case as the record is the facts and those are the only facts, so the Board will not be taking any new testimony today.

Counsel Carr stated that, as a review Board, an Appellate Board, if you will, you are to look at four criteria: You are to review the record and only the record to determine if there are errors of law. What is an "error of law?" Looking at it from the Board of Adjustment standpoint, if someone asks for a variance and you applied the laws having to do with Special Exceptions, that would be an error of law in that you applied the wrong standard. So when looking at the record that you have before you today with regard to the first case, you would look for errors of law. You also need to make sure that procedures were followed and those procedures, although not like a formal hearing before a court or something of that nature, you have to ensure that there was a full and adequate hearing, that people were allowed to give the evidence that they presented; if there were any other witnesses, that they could give rebuttal to those witnesses and cross-examine them. You are to determine whether the decision was based on competent, material and substantial evidence. In fact, that is one of the criteria Vice Chair Lewis read when she talked about the functions that you all undertake as a Board of Adjustment. She said she would define "competent", "material" and "substantial evidence" in a few minutes. Lastly, you are to ensure that the decision made by the Board whose decision you are reviewing was not arbitrary and capricious. She said she would define that term in the next section.

With regard to what is "competent, material and substantial evidence," courts have considered those terms to mean evidence that reasonable minds would accept as adequate to support the decision. An arbitrary and capricious decision is one that is whimsical, made patently in bad faith or indicates a lack of fair and careful consideration of the evidence that was presented.

With regard as to who has the burden, it is very similar to your function as a Board of Adjustment. The moving party or the person bringing the appeal has the burden of showing two things: 1) They have to allege that errors were committed; 2) They have to bring forth some evidence to support the errors that they believe were committed. So in that vein, that is the standard you are to apply when looking at this first case, which is an appeal from the Historic Preservation Commission.

Again, because this is new to this Board, she would encourage the Board members, if they have any questions regarding the standard itself or its application to the hearing

you are about to undertake, please feel free to utilize her services as Counsel to the Board.

APPEAL FROM HISTORIC PRESERVATION COMMISSION

- (A) **BOA-04-08: 607 PARK AVENUE - CAROLE, DONALD, AND MICHAEL ZELLMER APPEAL THE DECISION OF THE HISTORIC PRESERVATION COMMISSION DENYING A CERTIFICATE OF APPROPRIATENESS ON OCTOBER 29, 2003. THE APPLICATION WAS FOR EXTERIOR CHANGES TO A DWELLING INCLUDING PAINTING THE EXTERIOR BRICK PRIOR TO APPLICATION SUBMITTAL AND COMMISSION APPROVAL. ON NOVEMBER 17, 2003 AN APPLICATION FOR REHEARING CONSIDERATION FAILED BECAUSE NO HISTORIC PRESERVATION COMMISSION MEMBER MADE A MOTION IN FAVOR OF THE APPLICANT'S REHEARING REQUEST. CONTINUED FROM THE FEBRUARY 23, 2004 MEETING. SECTION 30-4-4.2(E)(5), PRESENT ZONING-RS-7, BS-3, CROSS STREET-CHARTER PLACE. (APPEAL NO. 1 GRANTED; APPEALS NOS. 2,3,4 DENIED)**

Mr. Ruska said he read into the record the facts of last month's hearing and would just incorporate those by reference.

Counsel Carr said Ms. Zellmer was the applicant and she has the burden of proof and she would be the one to first present argument before the Board.

Vice Chair Lewis said in that this is a review of the Historic Commission, what is it that Ms. Zellmer should be prepared to tell this Board today?

Counsel Carr responded that Ms. Zellmer should tell the Board what errors she believes were committed by the Historic Commission and what support she has in the record that those errors were committed.

Vice Chair Lewis asked Ms. Zellmer if she got a copy of the minutes from both of the meetings and pictures (transcripts)?

Ms. Zellmer said she did get copies of the transcripts. She did not have copies of the pictures. She had no issue with the copies of the pictures. Their pictures and her pictures were approximately the same.

Vice Chair Lewis said one of the key concerns of the Board from the last meeting was that all materials should have been sent to Ms. Zellmer.

Mr. Ruska said that was right and it sounded like she did not get the pictures, but she

did get the transcripts.

Mr. Tuck said the attachment had pictures in it and they could be shown to Ms. Zellmer.

Mr. Cross asked counsel if the Board could take the testimony that was presented last time as support for their decision today? He said they would not have to rehash the entire hearing from the last time. This is just a continuation of the previous hearing.

Counsel Carr said that was correct. She said again to be mindful that Ms. Zellmer did not have the transcripts before her at that time. She said she would give the Board the same warning; that any information she gives today has to be something supported by the record.

Mr. Cross said his point was that Ms. Zellmer made a lot of her points the last time. She has some appeals in writing here. He said she did not need to go through it all again since all the Board members were here.

Ms. Zellmer thanked Mr. Cross and added that she did have copies of the pictures.

Vice Chair Lewis asked Ms. Zellmer if on her errors where she felt that there were errors in the law or due process or any of those factors that must be met, occurred?

Ms. Zellmer said she had a question for the Board or perhaps the attorney and that was that their contention was that because they felt that they did not need a Certificate of Appropriateness based on the document that was presented by the HPC on their website, that any activity that happened after that fact was, in fact, in error. However, there are no copies, as far as she could tell, of the guidelines and regulations of the historic district entered into the formal record. So the question she had was: Where is the error? If, in fact, she did not need a COA, there would be no reason for her to have been cited to show up in the first place. So where does that fall in the process?

Counsel Carr said it was incumbent upon Ms. Zellmer at the hearing to present whatever evidence she felt necessary to assist the Commission in the granting of your application for a Certificate of Appropriateness.

Ms. Zellmer said she understood that. She said her question, however, goes back to the fact that if her contention that she did not need a Certificate of Appropriateness, how could she have presented evidence to the negative? She said that was her question.

Counsel Carr said the Board couldn't answer that question. This Board is to review only what the Historic Preservation Commission decided.

Mr. Cross said the Board did have the guidelines here that Ms. Zellmer was basing that argument on, and the Board will interpret those as part of this hearing today. He said her argument had been made and he understood it, since she made the point last time.

Counsel Carr said if that was what he believed the record showed.

Mr. Cross said he did.

Vice Chair Lewis asked if the Board members had any questions of Ms. Zellmer?

Mr. Cross said he had one. He then said this was his understanding from the record: You (Ms. Zellmer) did file an application for a Certificate that talked about the door, talked about some other things in there, and included in it the painting as required, and that was filed in September of 2003. Then the Historic Commission's records reflect that when they went to the site in October, you were in the process of the painting. In other words, the painting had not been done in September. You had filed the application for the Certificate, it had not been approved yet, obviously, and you went ahead and painted anyway. So there seems to be a disconnect with him as to whether she, in fact, thought she needed one for the painting and didn't because she went ahead and painted.

Ms. Zellmer said, in fact, their contractor did state that she did not need a Certificate to paint the house. And in referring back to that document which is part of the evidence in the package from last time, included in that were the reroofing, the installation of the wooden doors, painting the exterior, replacing rotted wood, all of those things that she had included in this were all of the things that were on the work order. In fact, it was her (the contractor) contention that the only part that really needed a COA was the installation of the new wooden front door, and the other things were included as part of the work order. She didn't need a COA for the reroofing, she included that; she did not need a COA to tear off the existing shingles and replace them with new shingles that were appropriate to the structure of the home that we're returning them back to the original materials; and she felt that she did not need a COA for the painting. She said she guessed her point here was her including the painting, as far as they were concerned, in exactly the same stance as including replacing the shingles that had rotted and been damaged by storm damage. She didn't need a COA for it. She did include it.

Mr. Tuck referred to Attachment #5 in the package of attachment for City of Greensboro, Board of Adjustment, dated March 22, 2004 (he thought this was in Ms. Zellmer's package that included the pictures), and asked Ms. Zellmer to flip over to a page labeled 24 at the bottom with the title of it being, "Changes to the building exterior, Attachment #5." He asked that Ms. Zellmer look at that document for him and stated it was after the pictures.

Ms. Zellmer said she had the page with 24 on the bottom, "projects DO NOT require a COA: Painting;" correct.

Mr. Tuck asked the Board if everyone had that, and several "yeses" were heard.

Mr. Tuck asked if that was an exact replica of what you saw on their website and is that the information you relied on to move forward with thinking you did not need a COA to paint the exterior of your house?

Ms. Zellmer said that was correct. Well, she said they actually moved forward with painting the house based on having hired a contractor who does work in the historic district who stated we did not. When Ms. Kuns came to the job site and stopped the work and saw our workmen, and they were asked to go back and look at the website. Mike told them, "I don't have a copy, it's on the website." This is exactly what it said. This is the document that was on the website at that time.

Mr. Tuck asked Ms. Zellmer if she knew the date her contractor started painting the exterior of the house? Was it before or after September 23, 2003, which is the date of the application for this Certificate of Appropriateness?

Ms. Zellmer said she did not know. She said she honestly did not know. She did not fill the certificate in, she didn't know whether she (the contractor) filled it in before or after she started painting. She said she knew that by the time the officers came, by the time the people came and took the pictures, that all of the painting except a very little bit had already been completed. She said she did not know how long it took them to do that.

Vice Chair Lewis asked if there were any other questions for Ms. Zellmer? Hearing none, she asked if there were any questions the Board wanted to ask of staff on anything that was presented earlier?

Mr. Tuck said he would like to ask staff a few questions.

Counsel Carr said he could do one of two things and she thought it would be dependent on staff. You could have staff come forward, if they had a presentation, or you can simply have staff come forward and ask questions. She realized this was a continuation and it would be whatever the Board feels.

When asked which staff person he would like to ask questions of, Mr. Tuck responded Ms. Kuns since she was the prime spokes person last time.

Stefan-Leih Kuns, a preservation planner with the City of Greensboro, HCD, came to the podium.

Mr. Tuck said he would like to ask Ms. Kuns similar questions, and that is if she knew if

the painting had started prior to the application for the Certificate of Appropriateness?

Ms. Kuns said the only thing she could say is when she went out there a week prior to the Commission meeting in October, there were workers out there doing work. As could be seen in the photographs that were supplied in the Board members' packets, they showed the original door lying on the ground; the newer door had been installed, but she ---

Mr. Tuck asked if the painting had commenced when she went out to the site?

Ms. Kuns said yes, that's what prompted the notice of violation was the painting prior to the approval at the October meeting.

Vice Chair Lewis asked Ms. Kuns if she was saying the painting was already started or complete or what?

Ms. Kuns said she did not look at the rear of the property. From the front, as you can see in the photographs with the building painted, those were the photographs that she took that day when she was doing preparation work for the October Historic Preservation Commission meeting. So from the front area, it looked like the sides and the door, that work had been completed, but the workers were working along on the left-hand side of the building when she got there that date.

Mr. Tuck asked if that was early in October or when was that?

Ms. Kuns said she could not remember the date and apologized, but said it would have been the Wednesday prior to the October Commission meeting, which is the last Wednesday of the month. She said she believed it was October 29th, so it would have been the Wednesday before October 29th that she went out there. So that would have been about a month after the application had been filed.

Mr. Tuck asked if Attachment #5 was a replica of what the public would see on the website?

Ms. Kuns said it was at that time. However, since this particular episode, that was pre the final publication about revised guidelines, and hoping that this doesn't happen again in the future, they have changed that. The guidelines are the same, but that text following it, which is not the guidelines, it says: No COA required - painting, now does say, she believed, repainting or something like that.

Vice Chair Lewis said if she remembered Counsel Carr's admonition to them at the end of the last meeting, it was that we could not consider any change since then; was that right?

Ms. Kuns said yes, and she was not expecting the Board to consider that. She knew that that was brought up at the last meeting.

Counsel Carr said that was correct. You have to look at the law at the time - the representation, the evidence at the time it was considered by the Board.

Ms. Kuns said what she wanted to point out was that the guidelines, the actual guidelines have remained the same and did not change.

Ms. Kuns was asked how would the average resident get to those guidelines outside of the website?

Ms. Kuns said that prior to last month's meeting they just adopted the new guidelines and had them available for publication. She said they actually had sent letters to every property owner telling them that the new guidelines were available. In the early fall, there was a very extensive process that they went through to revise the guidelines and several public hearings were held where every property owner in the historic districts were made aware of the revision process and were made aware of the new guidelines once they were adopted. So at this point, notification through that process would be how they would come in contact with those guidelines. Prior to all of this, typical ways that residents would get copies of the guidelines were through the neighborhood associations that have "meet and greet" committees that supply copies of the guidelines, as well as other information, such as copies of neighborhood newsletters. However, she really could not speak to that coming from a staff perspective versus the neighborhood perspective. They try to stay in good contact with realtor associations and make sure that they make people aware that their clients are purchasing properties within locally zoned historic districts and that there are regulations associated with those properties.

Mr. Tuck said as of September 29, 2003, Attachment #5 is what was listed on the website; correct?

Ms. Kuns said that was correct.

Mr. Tuck asked what was meant by: The following projects do not require a COA: Painting. What that could mean besides what it says?

Ms. Kuns said the implication, and she thought the general understanding was that it is what is required for repainting, not painting on unpainted surfaces. If you had unpainted wood shingles, you wouldn't go and paint them if they were stained. If you have brick that's not been painted, you wouldn't go and paint them. That was the implication by that. It never came up as an area of confusion in any of the review sessions until this particular case.

Vice Chair Lewis said that was the question she would ask, as a follow-up to Mr. Tuck. Is that the implication or is that the interpretation by staff?

Ms. Kuns said she thought it was the implication by staff. It is also the implication of the committee that wrote the guidelines and she thought was the intent of the Historic Preservation Commissioners when they reviewed the guidelines and it was just something that she didn't believe anyone really thought would ever be considered for unpainted surfaces, not when the guidelines are what the Commissioners are using to make their decisions and there is a guideline that specifically says not to paint unpainted surfaces.

Vice Chair Lewis said, from a layperson's perspective, how would Ms. Kuns interpret "painting," not from a staff person or from someone who was on the Commission?

Ms. Kuns said she thought from a layman's perspective she could understand the confusion. That is one of the reasons they have a new section in the new guidelines called, "How to use this Historic District Program Manual and Design Guidelines." It specifically says under "no COA required," that you should consult staff on issues. She said that was the user-friendly portion and she was sorry she did not have a copy of the guidelines in her hands.

Vice Chair Lewis said the Board could not have considered them anyway.

Mr. Holston said he had one more question for Ms. Kuns as it related to that word "painting," does that happen to be a hyperlink that might lead to some other site, or is that just ---

Ms. Kuns said not in this. The document that the Board was looking at was really a document that was an "in between." It was to go ahead and start applying the new rules before the final document had been published because there was a lot of excitement about the flexibility in rules and regulations that they had incorporated per City Council's request; so, unfortunately, no.

In response to a question asking who wrote the guidelines, Ms. Kuns responded that it was a subcommittee of the Commission. They met for almost a year bi-weekly. It was made up of 3 Historic Preservation Commissioners, a representative of the Aycock Neighborhood, Fisher Park and College Hill; their Neighborhood Associations appointed each of those. Then they also extended to some of the non-residential property owners in the historic districts and they had First Presbyterian in the Fisher Park Neighborhood put forth a member and Greensboro College put forth a member.

Ms. Kuns said ultimately the new guidelines were adopted by the Historic Preservation Commission since they are the ones responsible for it at the end of the day.

Mr. Cross said they seemed to be a little confusing to him as well because there seemed to be parts that are entitled "guidelines," which to the credit of the Commission they keep quoting those guidelines as evidence of how they are right in this whole appeal. But then there also seem to be parts that are more rules. They don't call them rules, they don't call them mandates, but it says, "The following projects do require," "The following projects do not require," and then they list some things and that says "guidelines." He said to correct him if he were wrong, was it his understanding that "guidelines" are, in fact, what they're told to be guidelines as opposed to mandates or rules? He asked Ms. Kuns if that made sense? He said those were not the same thing, in his opinion.

Ms. Kuns said that guidelines are simply that they are guidelines and they are not etched in stone; is that the point?

Mr. Cross said yes, they are like more - they are guides. This is generally what we want. But it seems to him that they have two things: they have rules - this is what you have got to do - and you've got guidelines - this is what we generally are inclined to believe. That is how he viewed things and he was just curious. He wanted to know if he was misreading how the Historic Preservation Commission is looking at this paper he was looking at?

Ms. Kuns said she would say that the guidelines are, from your interpretation and your perspective, are of rules in this document. All the other information is useful, helpful - she said she guessed it was the Historic District Manual. That is the portion that says this is how you work through the process. And again, she apologized because she should have provided this section of the guidelines that does talk about how to use this document. It talks about what the guidelines are and what they mean. It talks about what ---

Vice Chair Lewis said that was fine since they weren't introduced before, the Board could not have considered them today.

Ms. Kuns said she wanted to make one other comment. She thought one of the things was that staff was not aware of this confusion in the guidelines until they started doing research for their hearing. You can look at page 10 where Chairman Deaton, line 3, "So you had looked through the guidelines and couldn't find where you needed it and then you asked the paint company." And Mr. Zellmer said, "I did not have a copy of the guidelines." And line 8 says, "You didn't have a copy of the guidelines?" And Mr. Zellmer says, "No, sir." And Chairman Deaton says, "Did the painting company have a copy of the guidelines?" And Mr. Zellmer says, "Not that I'm aware of." And Mr. Deaton asks, "Okay, so how could they have told you one way or the other whether you needed a COA." She said she thought that was one of the points that "we received an application prior to work commencing," and then work was done and notice of violation was filed. It is kind of typical when they have an after-the-fact application, they

find out about the violation and one of the ways to remedy the application is to then file the COA. In this case, they had already filed the COA and chose to move ahead with the work prior to getting that approval.

Vice Chair Lewis said she thought she wanted a point of clarification and she thought it should come from the attorney or from Mr. Ruska, just so that she was clear on this.

The COA that this Board is looking at is the one dated 9-23-03? Counsel Carr responded that was correct.

On it, the Board is looking at the reroofing, the shingles, the installation, the painting, which was pretty much just the whole thing, as she understood from Ms. Zellmer and from what you said that was done, actually done at the house - all of the work that was done at the house? And then, you were out there when, Ms. Kuns?

Ms. Kuns said the application was filed too late to be put on the September agenda, so she was doing preparation work for the October agenda, which was a week prior to the October 29th meeting.

Vice Chair Lewis said then the Board could say 10-22, something like that, or approximately a month later? Ms. Kuns agreed.

Vice Chair Lewis asked if she was remembering correctly that it was at that time that they were told the work needed to stop? Ms. Kuns said that was correct; that's when staff first discovered that the work was going on without having received the COA, which was very odd since they had applied for the COA.

Mr. Ruska said, if it was helpful, the notice of violation that came from Zoning Enforcement was dated October 21, 2003.

Mr. Cross said he wished to get counsel's opinion on something. The question he had asked her about whether the rules and guidelines are guidelines, was he missing the boat on that one?

Counsel Carr said no, other than was the issue of what is a rule versus what is a guideline part of the record. Was there any ambiguity by this applicant with regard to what is a guideline versus what is a rule? She said she understood his point. She was stressing to the Board that you are an appellate body.

Mr. Cross said he understood that, but even appellate bodies have to interpret the rules of law that were in place at the time of the original hearings, which may not have been specifically referenced in that hearing. Does that make sense? That happens all the time, but regardless, he got his answer. He knew what she was saying.

Ms. Kuns said a lot of the discussion has focused around the painting and whether or not a COA was required. The other issue here was the door replacement. The record does indicate that, in that particular situation, the property owner was aware that a COA was needed for that and had actually contacted staff in January-February of 2003. So from an argument standpoint, they were well aware. It was placed on one of the agendas and was withdrawn because not enough information had come in. She said she was actually referring to conversations in the October minutes on page 15, lines 1 through 5, and on page 18, lines 6 through 8. So they were well aware of the point that the door did need approval, and here again, did not go through the proper process; just went ahead with the work without getting the approval.

Counsel Carr asked Mr. Cross if she could clarify something that she previously said. She had been given information by Mr. Williams, who is the attorney for the Historic Preservation Commission, in answer to Mr. Cross' question. And the reason that she handed that piece of paper back to him and have not answered Mr. Cross' question about the difference between the two is because of the record in this case. And she feared that any statement that she made in answer to Mr. Cross' question would taint that record.

Ms. Kuns said that was all she had to say, unless the Board had any other questions.

Mr. Cross said he would bring up the way he saw this and then give anybody a chance to respond, including the claimants, if they want to. The way he saw this was that there were four assignments of error and the Board has to make a decision on each one. He said they only seemed to be discussing one of them, except for at the end when the Historic Preservation Commission mentioned one. So he was going to skip the one they had been talking about and hit the other three real quick, which are 2,3, and 4 on the appeals sheet that was submitted to the Board.

The first appeal was about the door, seeing that door, appealing the decision for the door and they point out the fact that staff made a recommendation that their new door be approved and the Historic Preservation Commission went against it. He said he thought that loses, as far as an appeal because everything they said was correct. Staff recommended that the new door be approved, but the Historic Preservation Commission considered that argument, they considered all the facts, and he did not think there was any basis for this Board to say that was an arbitrary or capricious decision. And, therefore, he thought that this Board had to affirm the Commission on that particular item.

Mr. Kauber asked if he could comment on that before Mr. Cross went further? He said he would agree with Mr. Cross, except that the record also shows that the applicant indicated that the door that was supposed to stay original was not original. And so the Board has to question the sense of the guideline or the rule that says you're not allowed to replace the original door with something else. Well, it wasn't original or if it in

fact was, no one, at least in his reading of the record, contradicted the applicant's claim about that. So he was a little concerned that a rule is being applied that may not be applicable.

Mr. Cross said this was exactly why he wanted to bring it up because he thought it was healthier if they discuss it. His reaction to that was that the argument Mr. Kauber made never was made. They did say it wasn't a new door, but you are making the point that maybe a certificate wasn't needed, it sounds like based on the rules, and that point was never made in the original hearing. In fact, it's been a common understanding by all parties that a certificate was needed. You've got to take the appeal as it appears here and their appeal says that they made the wrong decision; that they should have approved the door. And the basis for that error was because staff recommended that the new door be approved. He said even if this Board disagrees with the decision, and he was not saying he agreed or disagreed with the decision, he did not think this Board could say it is arbitrary or capricious, although there wasn't competent evidence supporting the decision that they made.

The error on Appeal No. 3 says they appealed the refusal at the October 29, 2003 meeting to consider the information from the architect supporting the contention that the house doesn't need to be painted or the house can be painted. There are a couple of problems with this. One, the architect's letter or e-mail was never presented at the October 29, 2003 meeting. It was presented at the November meeting. He said he had looked at the record twice now. It's pretty clear to him that that's the case. So he thought this loses on a technicality here. However, that goes into the point that they're making that supports their Appeal No. 4, which they appealed the refusal to reconsider the application, which he thought was their second strongest argument of the four here at the November meeting. They brought two new pieces of evidence or information to support their case and then the Historic Preservation Commission decided not to make a motion to reopen the case. Again he thought that, whether you disagree or agree with that, that decision was not arbitrary or capricious. They took the evidence, they took it up at the meeting, from what he could see, and considered it and they decided not to reopen the meeting. He thought that, even if you agree or disagree, you couldn't say that that decision was arbitrary or capricious.

Mr. Cross said here especially he thought if, for example, they had come back the second time with tests - with what the Commission asked for, the Commission specifically says: "In its tests---" And they didn't and so he thought that doesn't excuse them. So that brings us back to No. 1, which is what the Board has been discussing here today, which he thought was the most troublesome error that they have pointed out here. Now what's interesting here is that this is a different standard, as far as he could tell. The Board is not doing an arbitrary or capricious standard; the Board is interpreting a rule. And in reviewing these "guidelines," for lack of a better word, although here it's part of its guidelines and part of its rules, it clearly says that projects do not require a COA: painting. Generally speaking, when you are following rules or a

set of rules, you're responsible for all of them. As a lawyer, and he knew this was not completely applicable, if it was at this hearing that there were clarifications later, he would be responsible for the clarifications. For example, the fact that they say you don't need a COA for painting doesn't mean they could paint the grass in the yard or paint the sidewalk in front of the house. There is a reasonable standard here that the Board should understand. You may have guidelines later that point out it is masonry and things that clearly go against what was actually done. However, he said he went back to his original point, rules are rules and guidelines are guidelines. And even when he read all of this taken together, there are rules. This requires a COA, this does not. Does not require a COA: painting. And it also appears, if you read everything, to apply to exterior of buildings and it's not talking about interior so you can get that. Granted, there are guidelines that go contrary to this. Another point was he did not know whether they read this or not before they started painting, he didn't know whether they relied on it. But just like a criminal that breaks a law that doesn't know the law is there, he's responsible and that's the rules that we have to apply. This is the rule the Board has to apply, and the rule says you don't need the COA for painting. It is poorly written and he understood that it probably wasn't the intent, and we're talking about repainting, but that's not clear to him and it wasn't clear to anybody. And this Board cannot let one person, one applicant in this case, be severely prejudiced by the mistake of the Commission. And as a result, he was going to side with appellant here on that error only.

Mr. Kauber said he agreed.

Mr. Holston said he agreed on all points.

There being no further discussion, Mr. Cross said in the matter of BOA-03-08, he moved that the Zoning Administrator's findings of fact be incorporated into the record, and based on the stated findings of fact, he moved the following on the four Assignments of Error that were set forth in the appeal to the Historic Preservation Commission decision. On the Assignment of Error labeled as No. 1 in the appellant's appeal, he found under that the Assignment of Error be recognized and the appeal granted; that the decision by the Historic Preservation Commission on October 29, 2003 be overruled on the basis that the guidelines and rules proposed by the Historic Preservation Commission state that the following projects do not require a Certificate of Appropriateness: Painting, clearly stated. Although guidelines seem to indicate the contrary, those guidelines do not appear to be mandates, whereas the other mandate stated, do not require such a certificate. As to the Assignment of Error No. 2, he moved that the Historic Preservation Commission be affirmed as to its decision for denying the approval of the new solid wood front door based on the rationale that they stated in their original hearing on October 29, 2003. As to the Assignment of Error labeled No. 3, he moved that the Historic Preservation Commission should be affirmed based on the fact that there are no indications in the record of October 29, 2003 meeting that a letter from the architect was actually presented at that meeting. And as to the Assignment of

Error No. 4, he moved that the Board affirm the Historic Preservation Commission's decision to not reconsider the application for the Certificate of Appropriateness at the November 19, 2003 meeting since their decision was not arbitrary or capricious on the record. Mr. Tuck seconded this motion. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Holston, Kauber, Tuck, Cross. Nays: None.)

Counsel Carr said this matter was now referred back to the Historic Preservation Commission to implement this Board's decision.

NEW BUSINESS

VARIANCE

All persons intending to speak to BOA-04-12 were sworn in.

(A) BOA-04-12: 5205 WEST FRIENDLY AVENUE RONALL DAVIS AND LAUREN WATERMAN REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A RECENTLY RELOCATED CONSTRUCTED SINGLE-FAMILY DWELLING ENCROACHES 0.36 INTO A 10-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING RS-12, BS-118, CROSS STREET-CANNON ROAD. (DENIED)

Mr. Ruska stated that Lauren Davis Waterman is the owner of a parcel located at 5205 West Friendly Avenue. The property is located on the southern side of Friendly Avenue and east of Cannon Road on Zoning Map Block Sheet 118. The lot is zoned RS-12. The applicant is requesting a variance for a proposed single family dwelling to encroach 0.36 feet into a required 10 foot side setback. The applicant applied for and received a building permit to construct and locate a single family dwelling on the lot. The building permit was approved for the structure to locate 11 feet from the side property line along the western boundary of the lot. The Zoning Office received a complaint on February 20, 2004 in regard to the house being located too close to the western property line of the lot. On February 19, 2004 a foundation survey was done and it was noted that the foundation was 9.64 feet from the side property line rather than 10 feet minimum that is required. Zoning Enforcement Officer Ron Fields issued a Notice of Violation to the property owner for placing the house within the required setback. The lot is a wedge shaped lot with sufficient lot size and lot width. It has approximately 115 feet of width and an average of 243 feet of depth. There are no known easements located on the property. The adjacent properties are also zoned RS-12.

Mr. Kauber said he wished to indicate that he did visit this site.

Vice Chair Lewis asked if there was anyone who wished to speak in support of this request.

David Waterman, 4108 Pheasant Lawn, was previously sworn in and stated his wife and he had purchased a home that was being torn down due to Painter Boulevard and they moved that home and recently placed it on the lot in question here. In planning for this home to be moved and located on this property, their intended measurements and intended placement of the home actually would have complied with the 10 foot setback ordinance. With the dimension requirements for the setback in mind, they actually brought back the point of wall, which is the kitchen and dining room, back from the actual roof approximately 4-6 inches just trying to make sure they were absolutely away from the 10 foot setback. He submitted pictures to the Board, which he explained. They placed the house and began to remodel, do additions, foundation and construction needed. They had approximately 70 percent of the house completed, when they discovered it was 4.32 inches off of the 10 foot setback. By requesting this variance, they still feel they are upholding the spirit of the ordinance due to the fact that it is well more than a 10 foot setback from house to house. They have estimates from their contractor at approximately \$10,000 to actually go back and change the wall or move the wall back. They would eliminate a kitchen and dining room in meeting the specific word that the ordinance sets out. In other words, by following the strict letter of the ordinance, they would basically be eliminating those two rooms of the house.

Mr. Waterman said it was the foundation that encroached into the side setback. He agreed that the error had been in placing the foundation, rather than misplacing the house. He agreed that the lot was narrow as you would go back from Friendly Avenue, but there was still plenty of room forward of where the house was placed. He also agreed that because the width would be expanding as you go forward, it would a lot easier to avoid the problem if the house had been placed closer to Friendly.

In response to a question from Mr. Tuck, Mr. Ruska said Friendly had a special setback of 100 feet from the centerline and with the 50 foot right-of-way, that would need a 50 foot setback from the property line.

Mr. Waterman said he staked the foundation. He said he did not want to assume that any mistake was made by the contractors on what they had brought in. He said they had some initial troubles with the contractors that did the additions and they actually had to terminate them because their work did not meet codes and failed inspection. But he still believed that as they made the measurement with the difficulties of placing that home, it was planned so it would actually comply with the ordinance.

Mr. Tuck said he realized the variation in the scheme of things was minute, but he was just trying to figure out where the error occurred. Surveying is not an easy science for a novice and it is hard to tell where a property line is a lot of times. So Mr. Waterman may have thought he was on the property line and, therefore, thought he was over 10

feet, but that property line could have not been exactly where Mr. Waterman thought it was. So if a surveyor came out there and staked that property line for Mr. Waterman and Mr. Waterman knew exactly where it was and then poured over 10 or 10+ feet and then somebody else came in behind Mr. Waterman and didn't put it right there, that would be one situation versus Mr. Waterman just assuming he knew where the property line was and pulled 10 feet off. He said he did think, in the overall scheme of things, it was fairly minute.

In response to a question from Vice Chair Lewis, Mr. Waterman said there was a survey originally done to determine the property line. It was from that survey that whoever did the foundation thought they were 10 feet off.

In response to a question from Mr. Tuck, Mr. Waterman said there were markings and actually studs, so they used those to mark off. He assumed they were at the corner of the lot line. He said he and his father-in-law walked and used a cord and just walked straight and set it up with a rope. They did the string or cord from corner to corner of the property line in basically two runs. They did not have a string long enough to run the complete line of the property line. They did attempt to walk in the two coordinates.

Mr. Cross asked for a clarification. He said he did not understand how 4.32 inches eliminates two rooms.

Mr. Waterman said it was in the scheme of the rooms. They are fairly small rooms, as it is, and to really pull that wall back in 5 inches, when you're talking about a room that is probably about a 4 foot walking space after the cabinets were installed. It would extremely shorten that room since it was already a small room. He said basically they would tear down the interior wall.

In response to a question from Mr. Tuck, Mr. Waterman said they would have approximately 3 more inches if the brick veneer were removed from the wall. It wasn't enough to get underneath the 4 inches. They talked to the contractor about putting siding up as opposed to putting the brick up, and the contractor did not feel it would get them under the 10 feet.

Douglas Martin, Esq., Attorney for Michael and Kay Tiddy, the adjoining landowners, said he had a couple of questions based on Mr. Waterman's testimony to the Board.

Attorney Martin said Mr. Waterman moved the house onto the lot in approximately August of 2003? Mr. Waterman said that was correct.

Attorney Martin said Mr. Waterman stated earlier that at that point, Mr. Waterman and his father-in-law had walked the property line and that was how he determined where to get the line to measure the 10 feet from; was that correct? Mr. Waterman responded that that was correct.

Attorney Martin asked if the survey that Mr. Waterman referred to in making the application to the Board is a survey by Joseph Stutts? Mr. Waterman responded yes.

Attorney Martin asked if the date of that survey was February 19, 2004? Mr. Waterman responded right.

Attorney Martin asked when the work was done to the residence after Mr. Waterman moved it physically to the lot, the patio, the driveway and the garage, after August of 2003? Mr. Waterman said he believed the garage was the first thing to go up; Attorney Martin said it was moved in mid-August; he would say it was done within a month after that or maybe a month and a half. The patio was again probably close to the beginning of October when the actual structure of the garage was built. There was probably another month and a half span in time between the garage and the patio being laid.

Attorney Martin asked if it would be fair to say the garage was done some time in September and the patio, sometime in November? Mr. Waterman said that was his vague recollection; he did not have specific dates for those.

Attorney Martin said he had no other questions.

Vice Chair Lewis asked if there was anyone present who wished to speak in opposition to the variance.

Wilson Clark Tiddy said everybody calls him Mike; he lives at 5207 West Friendly Avenue, next door to subject property, and was previously sworn in. He said 5207 was on the corner of Cannon and Friendly. He said it was his assumption that Ron Davis owned this property, both at the corner of Lipscomb and Friendly. and the property in question. It was just recently that he discovered that Mr. Davis' daughter owns the property. Ron Davis never told them that this was going to happen. He mentioned to Mr. Tiddy's wife one time in passing that he was going to buy a house and put it in, which she thought he said he was going to put it in his front yard. So as time went by, he was thinking that it was September, but maybe it was late August, the house was moved. When it was first moved, the foundation was poured and the footings were poured. He said if he might gesture, the house came from, if you are familiar with the Guilford College area, the campus area, the house came down Friendly Avenue. The first lot you come to was his lot, the second lot was the lot to which the house was going to be moved, the third lot was where Ronald Davis resides. Mr. Tiddy explained how the house came down the street and where the front of the house was. He said the house made a U-turn into the lot in question, 5205, and then came with the front of the house facing Friendly, which was the way it should be. The only way to get that vehicle with all those frames and stuff that the house was on to its intended destination would be to drive through his yard. He then presented some pictures to the Board and explained what each depicted. He said a lot of people had gathered around in his yard to watch what was going on. The people doing this work were feverously trying to move

earth and cut trees; it appeared they did not have a wide enough swath to come in. Buddy (who apparently was the contractor) came over and he was the first person who ever came to the Tiddys and said, "We need to do something with this truck. It needs to go through your yard." At first, his wife and he said, "No, absolutely not. That's crazy. We have plantings there, we have azaleas there," and you are talking about something that is almost as big as a house moving through his front yard. Buddy talked with the Tiddys some more about it and Mr. and Mrs. Tiddy realized that they were stuck; there was nothing else they can do. He said he really did not want them to come through his yard, but they talked to Buddy and they said that there was gravel and what appeared to be a driveway there. They told Buddy if he could keep the truck on the driveway and not get into their yard where all their plantings were, he could go on through the yard. Buddy said it would not take any time and they would be through there in no time. Buddy pulled it to where he wanted it to be (Mr. Tiddy guessed to put the house down on the footings and the foundation) and left the tractor there in their yard until Wednesday. During that time, the tractor leaked all this oil out and then when he got ready to go, he (Mr. Tiddy) was at work so he didn't know what happened then. He said his wife could address that later, but he believed it came through their yard and his wife called the police.

Mr. Tiddy said there was no survey done, he did not think, prior to this meeting. He believed the only survey, the only real survey that was not done until February. Two or three Sundays after they had moved the house, it was still up on those blocks and he and his wife kept saying that it just didn't look right. He knows there was supposed to be a 10 foot side setback. The City told him that the building permit was based on the house being 11 feet from the side.

So they called Ronald Davis and asked that they get together out in the front yard sometime on Sunday about 1 o'clock, and Mr. Davis said that would be fine. He and his wife and another neighbor were out in their yard at about 11 o'clock on Sunday and Ron Davis came over. They began to discuss it. The only thing he had that he could show was the way his picket fence came down. He told Mr. Davis that if that was right, from the fence towards the Dogwood tree (they had continued to refer to the Dogwood tree as the corner boundary), if that is correct, then this house is much closer than 10 feet from the property line. Mr. Davis didn't believe that, had a fit, jerked the rope up and stormed off, saying that it was not. He said he and his wife did not know and thought perhaps there was something they did not know about it. But it bothered him to the point that he went to the Chief Inspector for the City, who at that time was David Jones. He assigned a young man, Mark Stewart, to go out to take a look at this on the site.

Mr. Stewart came out to the site and Mr. Tiddy was there. Mr. Stewart told him that the City would require that they have what is called an "as built" survey. His understanding of that was, as you go through phases, someone has to come and say: "Yes, the footings are in the right place." Then you put the foundation down. Someone has to

come and say: "Yes, the foundation is in the right place." You build a wall and it continues and continues. So they went through this "as built" survey. He asked Mr. Stewart if he would follow up on that and let him know how that worked out because he was still concerned that it just didn't look right. Mr. Stewart called him one day and left a message and said: "I've got bad news. We looked at the stakes that Ronald Davis said was the property lines on the survey and not only does he have 10 feet, he has an inch to spare. He has got 10 feet 1 inch. He said, Mr. Tiddy, I hate to tell you, but part of your fence might be in his yard." He was very disappointed with that. And these conversations, the visits with the Inspector, etc., were in September.

He said it continued to bother them as the house was being built. The whole thing looked like it was in their front yard as it is. The very back of that house is closer to Friendly Road than the front of his house or Ronald Davis' house.

In February, he and his wife finally decided they would spend the \$300 and get a real survey so that once and for all they could prove to themselves they were either right or wrong. He got a sealed survey done, meaning it was a certified survey. It turned out that the house was 9 feet 8 inches from the property line. He took that to the City to David Jones. While he was sitting at Mr. Jones' desk, Mr. Jones called Ronald Davis, told Mr. Davis to stop work on the project, that the building was in the wrong place.

Vice Chair Lewis advised Mr. Tiddy that he was running out of time so if there were other points he wanted to make, he needed to make them quickly.

Mr. Tiddy said he would just stop and say that the building is in the wrong place. He misled the City, he tried to mislead him and his wife, and it is just not proper to grant him a variance as requested.

Mr. Tuck asked Mr. Tiddy what his concern was about the house being 4 inches too close to the line?

Mr. Tiddy said he and his wife plan to retire in the next year. Their grandchildren live in South Carolina and they would like to live near their grandchildren. He thought what was happening to them was going to really reduce the value of their property, this whole thing. He said he knew there were no codes or requirements or laws governing the curb appeal. But if he was going to sell his house to Mr. Tuck, for example, and Mr. Tuck liked the house, he liked the way it looks, etc., but Mr. Tuck discovers that the house next door is a code violation, that will make Mr. Tuck think twice and it also would make Mr. Tuck ask him to cut the price of his house. That was his No. 1 problem right there.

Kay Tiddy, 5207 West Friendly Avenue, was previously sworn in, and said that up until today, they thought Mr. Waterman was the contractor. That was what they had been told by Mr. Davis and his lawyer. So that was something new for them.

Bob Gibson, 724 Cannon Road, was previously sworn in, and stated he lived adjacent to the Tiddys and also his property goes up against Ron Davis' property. He too was getting older and had health issues and plans to sell. The property that he purchased has an easement on their property to the well. His house originally sat on that property and was moved in the late 1940s. He has an easement to a well that is there and he made that clear to Ron Davis and that he wanted to sell them his rights to the well, as Mr. Davis had stated to him in August that he was going to move this house in and that he was going to use the well for irrigation purposes. So he suggested that Mr. Davis run him a pipe and he would use irrigation on his property. But he had an easement on his and he would like that, if it has anything to do with this, to clear it up.

Counsel Carr said that question was outside the purview of the Board and was not subject to the variance.

Gutta Salmon, 720 Cannon Road, was previously sworn in, and stated that she wanted a clarification. Why did they have 10 feet between property line and house? If Mr. Tiddy builds a solid fence there and we have the solid house, how do emergency vehicles get through? She believed those ingress and egress 10 feet are for safety and she would like that in her neighborhood honored.

Ned Bryan, 5301 West Friendly Avenue, was previously sworn in and stated he wanted to say that as soon as the house was moved in, Mike and Kay were out there waving a red flag that the house was too close to the line, that it was encroaching on their property. He just wanted to say that immediately they thought it was too close. He believed that they told Mr. Davis the same thing.

Vice Chair Lewis asked Mr. Waterman if he would like to say anything in rebuttal?

Mr. Waterman returned to the podium and said he wished to present a site survey that he believed was done in 1983. That is the document that they used to make their measurements from. As far as the well is concerned, they had been told by the City that it would have to be hooked up and was not to be there as it is anyway. Since Mr. Tiddy is using the fence to judge his distance, the fence was 1.8 feet onto their property for a good 15-16 foot run.

Mr. Cross asked Mr. Waterman what he would do if he did not prevail here today; would he just lose those two rooms as he had said?

Mr. Waterman said they had another request to get the property rezoned from RS-12 to RS-9. In considering the cost of just ripping down those rooms, it is almost to their disadvantage not to pursue that at least and give it a chance. However, he would prefer to not have to do that.

In response to a question from Mr. Holston, Mr. Waterman said he did not serve as the contractor for this project.

It was pointed out that in the application for the variance, Item 2, the statement was made: the foundation and footings were placed by subcontractor aware of the property line and 10 foot setback requirement, but they miscalculated the measurements.

Mr. Waterman said that was his estimate, his and his wife's estimate of the circumstances.

Mr. Kauber said he seemed to see that as contradicting something Mr. Waterman had said earlier. Mr. Waterman had said earlier that he did not want to suggest that it was someone else's fault and that suggests otherwise; was he reading it correctly?

Mr. Waterman said correct. That was their estimate. He was trying his best not to lay any type of blame on any party involved here. That was his estimate of the circumstances and what occurred.

Mr. Kauber said that was okay, as long as Mr. Waterman realized that when he made a statement like that on his application, that is suggesting that this person, in fact, made the error. In fact, it is more than suggesting it.

Mr. Tuck said he read that a different way in that it says, "foundations and footings were placed by subcontractor aware of the property line and 10 foot setback requirement, but they miscalculated their measurements." Who gave them the information of the location of the property line and the 10 foot setback requirement?

Mr. Waterman said that would have to be him.

Mr. Tuck then asked where did their miscalculation come in? What information did you give them? Did you give them a 10 foot setback?

Mr. Waterman said he actually went and measured over 10 foot of what he believed was the property line, marked the spot and told them to begin.

Vice Chair Lewis said she had a question and she was not sure to whom she should direct it. She was going back to what Mr. Tiddy said about coming to the City and the City going out and measuring and coming up with 11 feet. She asked if she heard Mr. Tiddy correctly on that?

Mr. Tiddy said the 11 foot reference that he made when he went to the City after they became concerned about it, they showed him the permit. At that time, Waterman was the contractor. He didn't know if that was Mrs. or Mr., but they showed that they got the

permit based on the west wall of the foundation being 11 feet and the east wall of the foundation being 15 feet from the side property line.

Vice Chair Lewis said just as follow-up, because she thought she misunderstood him, the City did not go out and do any measurements?

Mr. Tiddy said the City went out and did a measurement from what they were told was the survey line, that a surveyor had done it. He knew that was hearsay, but this is what David Jones told him; that they were required to get an "as built" survey. And apparently they misrepresented that survey to the City. There were never any stakes out there until his survey was done, except for something that appeared to be maybe a broomstick. It had the words "Duke Power" on it. Duke Power does not do surveys, they do electrical lines.

Mr. Holston asked Mr. Waterman if it were a correct assumption that the permit was issued upon and the intent was to have an 11 foot distance between property lines, but that based upon measurements that you provided, the subcontractor placed the house closer than that?

Mr. Waterman responded yes.

Counsel Carr asked if Vice Chair Lewis get her question answered?

Vice Chair Lewis said she would tell them what she thought she heard. What she thought she heard was that the City did go out and do a measurement, whether it was correct or not.

Counsel Carr said the City went out and measured with regard to the complaint of the residents, and that was after-the-fact.

Mr. Tiddy said that based on their complaining that things seemed to be close, he went to the Inspector's Office at the old library. They sent Mark Stewart out there. Mark Stewart said the City was going to require them to do an "as built" survey, which means that the survey has to be sealed (stamped with the surveyor's seal) and they have to have markers and they will measure from the marker to the footings and say, "Okay, that's all right." Then they will come back a week later and measure from the marker to the foundation and say, "Okay, that's all right." But the City does not do a survey. The City measures from what someone says is a survey, but they never did the survey. Prior to the Stutts survey, the most recent survey was 1983.

Vice Chair Lewis thanked Mr. Tiddy for that clarification. What she was going back to was Mr. Tiddy's statement that he told you he had bad news for you, so she understood the distinction now.

Mr. Tuck said just to clarify, if it is on this survey, it would have more than likely been done by the surveyor, not by the City. Although this appears to be a true and legitimate copy of the survey, it does say at the top of the seal that if this stamp is not in red, it's not a legal copy, but, as an engineer and a contractor, it does appear to be a document that was done by a surveyor.

Mr. Tuck asked Mr. Waterman if at any time did he rely on the location of the fence that appears to be Mr. Tiddy's to be the property line?

Mr. Waterman responded, "No, sir." He said that originally when his father-in-law and he originally measured off, they had noticed that his fence was, in fact, on part of their property. He did not rely on the placement of that fence to mark the property.

Mr. Kauber said he wanted to make one comment. He said they had had a number of these cases come before the Board recently and, in fact, there was one on last month's agenda that was withdrawn. It surprised him that anything that could have as serious implication as occur in these cases would not be more carefully handled. One of the things that worries him, he hated to see people pay a lot of money for minor mistakes. On the other hand, if we routinely say in Board of Adjustment sessions like this, "Well, you know, it's going to be an awful lot of money to fix this," then the Board is sending a message he thought to the public that said: As long as you make a big enough error, you can come in and people will say, "Gee, it's going to cost an awful lot so we're going to forgive it." However, he was getting concerned about the number of cases like this that are starting to come in.

Mr. Tuck said his comments were, and he knew he realized they could not consider the monetary fix as part of their decision, he knew they have a very strict level to consider in these cases. He thought it was unfortunate that in this case, being the small amount of the encroachment, if you will or the request for that, this could not have been worked out easier between the neighbors. There are too many easy fixes that would cost a whole lot less than any potential fix. And he thought this thing, especially with what is going on up and down that property line with both neighbors, that this could have very easily been fixed between the neighbors and never been before this Board. However, he thought based on what he had heard, he would wait on other comments, unless the Board was ready for a motion.

There being no other comments, Mr. Tuck said in BOA-04-12, 5205 West Friendly Avenue, he would like to incorporate the Zoning Enforcement Administrator's statement of findings of facts and that based on those findings of fact, he moved the Zoning Enforcement Officer be upheld and the variance denied, based on the following: That there are practical difficulties and unnecessary hardships and that hardship is based on the result that it is of the applicant's own actions; that the applicant did undertake the marking of the property line and, therefore, the 10 foot required side setback and missed the mark; based on that, the Zoning Enforcement

Officer should be upheld; seconded by Mr. Holston. The Board voted 4-1 in favor of the motion. (Ayes: Holston, Kauber, Tuck, Cross. Nays: Lewis.)

Vice Chair Lewis stated that the variance was denied. The applicant's next step would be to take the matter to Superior Court, should he so choose.

Vice Chair Lewis asked Mr. Ruska if there was anything else to be considered at this meeting.

Mr. Ruska said that was it, except that he had placed at each Board member's chair an update from the Institute of Government's study that they released last June and he thought they had probably added some meat to the report and they have had additional time to also look at the results of the survey that they did of all the jurisdictions in North Carolina that deal with variances. So he thought they might find that interesting reading to see how we compare statewide.

Vice Chair Lewis said that with material like this that they get, sometimes she read through it and there are clarifications or just that she would like discussion with other members on. Was that something that they needed to do when they come to the meeting or is that something that they can do without being in a public meeting?

Counsel Carr said as long as they don't have a majority of the members present, it is not a public meeting under the public meeting laws. If two of them wanted to get together and discuss it prior or afterwards with coffee, that's perfectly fine. It is also appropriate to put it on the agenda for discussion as an information or educational piece. The problem they run into to is, such as today, there were two hearings and it took two hours. Sometimes we have five hearings and it takes us an hour and a half. Sometimes they have three and it takes them three hours. She did not want to impress on them as a Board to take one more minute of your time unless they requested it.

Vice Chair Lewis said the only reason she raised the issue was sometimes when she read through the materials, it would be helpful to her to have Counsel's comments on it or to hear other members with their comments. She just raised it as a point.

Mr. Ruska said if he did give them something like a special report, like the Institute did, and you have questions about it, just give him a call ahead of time and just alert him to what it is and that way, they can bring it up at the next meeting and discuss it.

Mr. Kauber said he agreed with Vice Chair Lewis. He thought some of these things would be very interesting to toss around as a Board of Adjustment. The problem is that when you have hearing and a long meeting, people are ready to get out of here.

Vice Chair Lewis said she understood that too. Always she went with the premise that the Board of Adjustment is here for a purpose, which means that the staff has to

interpret the rules and regulations to the letter of the law. However, those of them who sit on this Board can take some other factors into consideration. So she thought those are the things that they needed to be mindful of too and if they need to have discussions on that, she thought that was appropriate too.

* * * * *

There being no further business before the Board the meeting was adjourned at 3:56 p.m.

Respectfully submitted,

Joyce Lewis, Vice Chair
Greensboro Board of Adjustment

JL/jd.ps